

COTTONWOOD HEIGHTS

ORDINANCE No. 359

AN ORDINANCE ENACTING AND CODIFYING CHAPTER 17.29 ("STORM SEWER UTILITY") OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES

WHEREAS, effective 14 January 2005, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") adopted a code of ordinances (the "*Code*") for the City; and

WHEREAS, following adoption of the Code, the Council determined that further regulation of storm drainage and flood control development, groundwater source protection and related matters in the City was warranted and, consequently, amended the Code on 18 November 2008 to include Title 17, entitled "Storm Drainage and Flood Control Development; Ground Water Source Protection" ("*Title 17*"); and

WHEREAS, the Council met in a regular session on 15 June 2020 to consider, among other things, enacting Chapter 17.29 of the Code ("*Chapter 17.29*") concerning the creation and operation of a storm sewer utility, the imposition of related user fees, and adoption of a fee schedule; and

WHEREAS, the City owns and operates a storm water sewer system which was developed over many years by Salt Lake County as the City's predecessor-in-interest and currently consists of a network of natural conveyances and manmade structures and conduits that collect and route storm water runoff; and

WHEREAS, the Council finds that inadequate management of the quantity and quality of storm water runoff causes flooding and property damage, carries concentration of heavy metals, oils, and toxic materials into receiving and ground waters, and degrades the integrity of the City's streets and transportation systems; and

WHEREAS, the Council finds that such are hazards and pose a significant risk to public health, safety, and welfare; and

WHEREAS, the Council also finds that such risks are best managed by a storm sewer system that is effectively repaired, replaced, improved, maintained, operated, regulated, and controlled; and

WHEREAS, the Environmental Protection Agency ("*EPA*") has established rules setting forth the National Pollutant Discharge Elimination System permit application process and has adopted rules and regulations for storm water discharge; and

WHEREAS, the State of Utah, through its Department of Environmental Quality ("*DEQ*"), has established a Utah Pollutant Discharge Elimination System permit system and has adopted rules and regulations for storm water discharge; and

WHEREAS, the rules and regulations promulgated by the EPA and the DEQ provide that where more than one public entity owns or operates a municipal separate storm water system

within a geographical area, such municipalities may join together and be co-applicants for a permit; and

WHEREAS, the City joined with Salt Lake County and other municipalities in the Salt Lake Valley as co-applicants pursuant to the and the Utah Pollutant Discharge Elimination System; and

WHEREAS, on 26 February 2021, the City was issued authorization to discharge municipal storm water under the Utah Pollutant Discharge Elimination System ("*Permit*"); and

WHEREAS, pursuant to the Permit the City is required, among other things, to have legal authority to (a) control the contribution of pollutants to the storm water system associated with residential, commercial, institutional, and industrial activities; (b) prohibit illicit discharge to the storm water sewer system; (c) control discharges to the storm drain system of spills, dumping, or disposal of materials other than storm water; and (d) enforce compliance with the conditions and ordinances; and

WHEREAS, the Council finds that implementing a storm sewer utility fee will help achieve compliance with the requirements of the Permit; and

WHEREAS, the Council also finds that implementing a storm sewer utility fee will enable ongoing maintenance, operations, regulation, enforcement, and improvement of the City's storm sewer system; and

WHEREAS, based on the representations made to the City and the Council by consulting engineers Bowen Collins & Associates ("*Bowen Collins*"), the Council finds that the owners of impervious surfaces contribute to, makes use of, or benefit from the City's storm sewer system and should proportionately contribute to the funding of the City's program to maintain, operate, regulate, enforce, and improve the City storm water program; and

WHEREAS, Bowen Collins has evaluated methods to fund the City's storm sewer system program and has recommended that the City impose a storm sewer utility fee; and

WHEREAS, the Council further finds that the establishment of a storm sewer utility is the most fair, equitable, and nondiscriminatory method to fund the City's storm sewer program and compliance with the requirements of the Permit, and that the establishment of a storm sewer utility fee therefore is in the best interest of the health, safety, and welfare of the City and its residents;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. **Adoption and Codification of Chapter 17.29**. The Council hereby approves and adopts Chapter 17.29 in the form attached hereto as Exhibit "A," and hereby codifies the same as Chapter 17.29 of the Code; provided, however, that the city attorney, with such assistance as he may require from other city officers and staff, is authorized and directed without further council action to make such additional formatting and technical corrections to Chapter 17.29 as he may consider to be appropriate in connection with inclusion of Chapter 17.29 in the Code.

Section 2. **Amendment to Consolidated Fee Structure.** The City's consolidated fee schedule is hereby amended to include the storm sewer utility fee schedule shown on attached Exhibit "B."

Section 3. **Action of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 4. **Severability.** All parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 5. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. **Effective Date.** This Ordinance, assigned no. 359, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

PASSED AND APPROVED this 15th day of June 2021.

ATTEST:

By: 
Paula Melgar, Recorder



COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Douglas Petersen	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	<input checked="" type="checkbox"/> Yea	<input checked="" type="checkbox"/> Nay
Tali C. Bruce	Yea <input type="checkbox"/>	Nay <input checked="" type="checkbox"/>
Christine Watson Mikell	<input checked="" type="checkbox"/> Yea	<input checked="" type="checkbox"/> Nay

DEPOSITED in the Recorder's office this 15th day of June 2021.

POSTED this 17th day of June 2021.

Exhibit “A” to Ordinance 359

(Attach Copy of Chapter 17.29)

Chapter 17.29

STORM SEWER UTILITY

Sections:

17.29.010 Purpose.

17.29.020 Definitions.

17.29.030 Storm sewer utility; Policy manual.

17.29.040 Storm sewer utility user fee.

17.29.050 Severability.

17.29.010 Purpose.

The purpose of this chapter is to protect the health, safety, and welfare of the city and its residents by efficiently operating a storm sewer system, managing and controlling storm water runoff, protecting property, preventing polluted waters from entering the water supply and other receiving waters, and establishing a viable and equitable method of financing the storm water system long-term improvement, operation, and maintenance.

17.29.020 Definitions.

The following definitions apply to this chapter, which augment or control, as applicable, the definitions contained in section 17.04.020 of this title. Words used in the singular shall include the plural, and vice-versa. Words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Any word not defined in this section or in section 17.04.020 shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

“*City*” means Cottonwood Heights, a Utah municipality.

“*City manager*” means the City’s city manager, who is the city’s chief executive officer.

“*Class 1*” means a single-family residential structure that is located on parcel that is 21,780 square feet (i.e., one-half acre) or less.

“*Class 2*” means a single-family residential structure that is located on parcel that is more than 21,780 square feet.

“*Class 3*” means “stacked” multi-family residential dwellings (that may be referred to as “condominiums,” or “apartments”) that are contiguous with other dwellings but where single families may live on multiple stories, levels, or units. With respect to stacked housing and condominiums, the dwellings are separate pieces of real property. With respect to apartments, the dwellings are not separate parcels of real property.

“*Class 4*” means “non-stacked” multi-family residential dwellings (that may be referred to as “townhomes,” “duplexes,” “twin homes” or similar) that generally connect to adjoining units but where a single family would occupy an area represented by a two-dimensional footprint, not stacked on multiple levels, and the dwellings are separate parcels of real property.

“*Class 5*” means all types of properties not defined by Classes 1, 2, 3, or 4, such as commercial and institutional businesses, government buildings, churches, schools, factories, parks, etc.

“*County*” means Salt Lake County.

“*Customer*” or “*person*” means any individual; public or private corporation and its officers; partnership; limited liability company; association; firm; trustee; executor of an estate; the state or

its departments, institutions, bureaus, agencies; county; city; political subdivision; or any other governmental or legal entity recognized by law.

“*Director*” means director of the city’s public works department or other designee of the city manager.

“*Equivalent residential unit (ERU)*” means a unit equal to the square footage of impervious surface area. This is based on an average single-family residential parcel, which has an impervious surface area of 4,000 square feet.

“*Impervious surface*” means a parcel’s hard surface area that causes water to run off its surface in quantities or speeds greater than under natural conditions. Some examples of impervious surfaces are rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, and gravel that has been subject to surface traffic, including compacted gravel surfaces.

“*National Pollutant Discharge Elimination System (NPDES) Stormwater Regulations*” means the provisions of the Federal Clean Water Act establishing specific permit requirements for the control of stormwater discharge.

“*Parcel*” means the smallest, separately segregated unit of land having an owner. A parcel has boundaries and surface area and is documented with a property number by the county.

“*Policy manual*” means the “Cottonwood Heights Stormwater Fee Policy Manual” and the city’s policies and procedures for the administration of the storm sewer user fees maintained by the city, all as amended from time to time, which are hereby adopted in their entirety by this reference.

“*Single-family residential parcel*” means any parcel of land containing a single-family dwelling unit.

“*Stormwater*” means water produced by storms, surface drainage, snow and ice melt, and other water handled by the storm sewer drainage system.

“*Storm sewer facilities*” means any facility, improvement, development, or property made for controlling stormwater quantity and quality.

“*Storm sewer system*” means all man-made storm sewer facilities and conveyances, and natural stormwater systems owned or maintained by the City that store, control, treat, and/or convey stormwater.

“*Storm sewer utility*” means the utility created by this chapter, which operates, maintains, regulates, and improves the city’s storm sewer system, facilities and programs.

“*User fee*” means the fee charged to use the storm sewer system, which is imposed by this chapter.

“*Undeveloped parcel*” means any parcel that has not been altered by grading, filling, or construction. Undeveloped parcels do not contain impervious surfaces.

17.29.030 Storm sewer utility; Policy manual.

A. There is hereby created and established a storm sewer utility operated by the city that includes a user fee rate structure.

B. There is hereby established a storm sewer utility enterprise fund to handle all income, expenses, and other financial transactions related to the storm sewer utility. All fees collected with respect to the storm sewer utility shall be deposited in the storm sewer utility enterprise fund. Money in the storm sewer utility enterprise fund shall not be commingled with other city funds and may be transferred to other city funds only as allowed by the Uniform Fiscal Procedures Act for Utah Cities, UTAH CODE ANN. 10-6-101 *et seq.*, as amended.

C. The city shall determine which storm sewer system assets will be transferred to the storm drain utility. Until such transfer, the storm sewer utility shall operate, maintain, and improve all of the city's existing storm sewer facilities.

D. The storm sewer utility shall be administered by the director.

E. The city hereby adopts the policy manual to assist in applying, administering, and interpreting the user fee, the user fee credit, and other provisions related to the storm sewer utility. The city manager may approve non-substantive changes to the policy manual suggested by the director from time to time, such as updating contact information or web links, correcting typographical errors and similar, clarifying the credit application forms, clarifying billing procedures, etc.

17.30.040 Storm sewer utility user fee.

A. The owners and occupants of impervious surfaces within the city which contribute runoff water to the storm sewer system, and any others who otherwise use or benefit from the storm sewer system or the storm sewer utility, will be jointly and severally responsible for paying the storm sewer utility user fee as set forth in this chapter.

B. The user fee shall be based on the number of equivalent residential units (ERUs) on the user/customer's property. An ERU is the average amount of impervious surfaces in a single-family residential parcel and is based on a statistical analysis of residences within the city. One ERU equals 4,000 square feet of impervious surface area.

C. The user fee shall be calculated as follows:

1. Class 1. Each Class 1 single family dwelling shall pay a base rate equal to 1.0 ERU.
2. Class 2. Each Class 2 single family dwelling shall pay a base rate equal to 2.0 ERUs.
3. Class 3. Each Class 3 dwelling shall pay a base rate equal to 0.3 ERU. For example, each dwelling in a 16-unit apartment building would pay of base rate of .3 ERU, meaning the equivalent of 4.8 ERUs for the entire 16-unit apartment building.

4. Class 4. Each Class 4 dwelling shall pay a base rate equal to 0.6 ERU. For example, each of the two dwellings in a duplex would pay a base rate of 0.6 ERU, meaning the equivalent of 1.2 ERUs for the entire duplex.

5. Class 5. Because Class 5 parcels may contain a variety of uses, each Class 5 parcel (except undeveloped parcels) shall pay a multiple of the base rate, expressed in ERUs, according to the measured impervious area on the property. The resulting ERUs are calculated by dividing the total square feet of impervious area of the property by 4,000 and rounding to the nearest tenth of an ERU. For example, a Class 5 parcel containing 100,000 square feet of impervious area would pay a base rate equal to $100,000/4,000 = 25$ ERUs.

D. The per ERU user fee charge imposed hereby shall be as set forth in the storm sewer utility fee schedule incorporated in the city's consolidated fee schedule, as amended.

E. The director may grant a fee credit for customers as provided in the policy manual, such as customers that:

1. Own and maintain a detention facility on their parcel in accordance with city standards and as set forth in the policy manual;

2. Own and maintain a retention facility on their parcel in accordance with city standards and as set forth in the policy manual;

3. Conduct personnel training as set forth in the policy manual; or

4. Demonstrate a financial hardship or who have a household member in active duty military service as set forth in the policy manual.

F. Any person or entity who is aggrieved by the application and calculation of the user fee charge to their property or following denial of their request for a fee credit may appeal to the director within 30 days after notice of such application, calculation or denial as set forth in the policy manual.

G. The city shall bill, or cause to be billed, property owners and/or occupants for storm sewer utility user fees. Fees and charges shall be considered delinquent if not paid as determined by the procedures established by the city and will be a debt to the city, which shall be subject to recovery in a civil action.

17.30.050 Severability.

If any portion of this chapter is determined to be, or is rendered, illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such section shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section of this chapter.

Exhibit “B” to Ordinance 359

(Attach Storm Sewer Utility Fees to be Included in Consolidated Fee Schedule)

STORM WATER FEE DRAFT RATE SCHEDULE

Cottonwood Heights

Year:	2021-2022 FY	2022-2023 FY	2023-2024 FY	2024-2025 FY	2025-2026 FY	2026-2027 FY	Future Years
Rate (Monthly Fee per ERU):	\$7.50	\$7.73	\$7.96	\$8.20	\$8.44	\$8.69	+3% each year

*Rate to be increased by 3% per year to account for inflation